

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

WANJUAN MEDIA (TIANJIN) CO., LTD. a.k.a.
PILOT FILM AND TELEVISION MEDIA
(TIANJIN) CO., LTD.,

Plaintiff,

v.

AMAZON.COM, INC., AMAZON.COM
SERVICES LLC, and “JOHN DOES” 1-5,

Defendants.

Case No.: 1:22-cv-1434-JPO

**PLAINTIFF’S RULE 56.1 STATEMENT OF UNDISPUTED MATERIAL FACTS IN
SUPPORT OF PLAINTIFF’S CROSS MOTION FOR SUMMARY JUDGMENT**

Pursuant to Federal Rule of Civil Procedure 56 and SDNY Local Civil Rule 56.1, Plaintiff Wanjuan Media (Tianjin) Co., Ltd. a.k.a. Pilot Film and Television Media (Tianjin) Co. Ltd. (the “Plaintiff” or “Wanjuan Media”), submits this statement of undisputed material facts in support of its Cross Motion for Summary Judgment against defendants Amazon.com, Inc. and Amazon.com Services LLC (collectively as “Amazon” or “Defendants”), and states:

1. Wanjuan Media is a TV show production and distribution company based in Tianjing, China. See Jian Ling Zhao’s Declaration (hereinafter referred to as the “Zhao Decl.”) at ¶ 4.

2. Wanjuan Media once used the name Pilot Film and Television Media (Tianjin) Co., Ltd. or Paile Film and Tv Media (Tianjin) Co., Ltd., and changed to the current name on January 27, 2021. See Zhao Decl. ¶ 5.

3. One of TV Shows produced by Wanjuan Media is called “General and I” (Chinese name is “孤芳不自赏”) (hereinafter referred to as the “General and I”), which is a historical/costume TV show in Chinese language with a high production quality and strong cast. See *Id.* ¶¶ 6, 20.

4. On or about April 22, 2015, Wanjuan Media (at that time still called Pilot Film and Television Media (Tianjin) Co.) entered into a “TV Series Joint Production Agreement” (the “Joint Production Agreement”) with another Chinese company named Shanghai Croton Culture Media, Co., Ltd. (“Croton Culture”) to produce the “General and I” TV show. See *Id.* ¶ 7.

5. Under the Joint Production Agreement, Wanjuan Media owns the copyright of the “General and I” together with Croton Culture. See *Id.* ¶ 8.

6. On or about Feb. 18, 2016, Wanjuan Media (still called Pilot or Paile at that time) entered into another agreement called “Project Joint Investment, Filing, and Distribution Cooperation Agreement Regarding the TV Series ‘General and I’” (the “Joint Distribution Agreement”) with Croton Culture and Shanghai Croton Film and TV Media Co., Ltd. (the “Croton Film and TV”). See *Id.* ¶ 9.

7. The Joint Distribution Agreement is a valid contract because Wanjuan Media (still under the name of Paile Film and TV Media (Tianjin) Co., Ltd. at the time the contract was signed) agreed to it by applying its corporate stamp on the signature page of the agreement. Wanjuan Media’s company practice has always been that the company approves the contract it entered by applying its corporate stamp. See *Id.* ¶ 10.

8. Under the Joint Distribution Agreement, Croton Culture transferred all its rights (including the copyright and distribution rights) in the “General and I” to Croton Film and TV. See *Id.* ¶ 11.

9. Provision 5.2 of the Joint Distribution Agreement provides that “Party A and Party B¹ shall be jointly responsible for signing distribution contracts related to the TV Series with external parties, and Party A and B shall each maintain a copy of distribution contracts for their files.” *Id.* at ¶ 12.

10. Provision 5.1 of the Join Distribution Agreement also provides “Party A shall be responsible for the distribution and communications of the TV Series on new media and overseas media, and Party B shall be responsible for the distribution and communications of the TV Series on traditional media.” The new media mentioned here primarily means internet or online platforms. The traditional media instead means TV stations. See *Id.* at ¶ 13.

11. Subsequently, Croton Film and TV further transferred its rights in the “General and I,” including but not limited to the copyright and distribution rights, to another company called Horgos Croton Culture Media Co., Ltd. (the “Horgos Croton”). Such assignment of rights took place before March 7, 2016 because Horgos Croton entered into a distribution agreement with a third party company² on March 7, 2016 as a co-owner of the “General and I” (the “LeTV Distribution Agreement”). See *Id.* at ¶ 14.

12. Under the LeTV Distribution Agreement, LeTV purchased the distribution rights of the “General and I” within the Chinese market for a total amount of ¥ 450,000,000 RMB (about \$65,345,238 USD in current rate). See *Id.* at ¶ 15.

13. In the LeTV Distribution Agreement, Wanjuan Media approved this agreement by applying its stamp on the signature page and no additional signature was provided. See *Id.* at ¶ 15.

¹ Party A is Croton Film and TV and Party B is Paile (or Pilot) Film and TV Media (Tianjin) Co., Ltd. (later called Wanjuan Media since January 27, 2021) under the Joint Distribution Agreement. See Ex. 7 to Li Decl. at p. 15 (bates number P000065 or Amazon_Wanjuan_000165).

² Tibet LeTV Information Technology Co., Ltd. (the “LeTV”)

14. And on September 28, 2017, Horgos Croton and Wanjuan Media (still called Paile Film and TV Media at that time) entered into a settlement agreement (the “Settlement Agreement”) with LeTV and its affiliated companies to resolve disputes arising out of the LeTV Distribution Agreement. Parties to the Settlement Agreement approved agreement by applying their corporate stamps and no party provided additional signatures except Horgos Croton. See *Id.* at ¶ 16.

15. Around March 2016, Wanjuan Media also contacted and located a traditional TV station³ to distribute the “General and I.” Wanjuan Media entered into a distribution agreement with this TV station and Wanjuan Media notified and sent a copy of the distribution agreement to Croton Film and TV and Horgos Croton. See *Id.* at ¶ 17.

16. Under the distribution agreement with the Satellite TV Channel of Hunan Radio and Television Station, the distribution right of the “General and I” in Chinese market was worth about than ¥228,000,000 RMB (about \$33,110,657 USD in current rate).

17. The “General and I” was first published in China in January 2017. Horgos Croton and Pilot (or Paile) Film and Television Media (Tianjin) Co., Ltd. were identified as the co-production companies at the ending page of the “General and I.” See *Id.* at ¶ 18.

18. Wanjuan Media did not realize Amazon distributed the “General and I” on its Prime Video platform until May 2021, when a friend of Wanjuan Media’s president told her that the “General and I” was on Amazon’s platform. See *Id.* at ¶ 20.

19. Wanjuan Media did not receive any income distribution from Croton Culture, Croton Film and TV, or Horgos Croton for the distribution of the “General and I” on Amazon’s Prime Video Platform. See *Id.* at ¶ 21.

³ Satellite TV Channel of Hunan Radio and Television Station.

20. After it became aware of Amazon’s illegal distribution, Wanjuan Media hired attorneys to conduct investigations and took screenshots of the Amazon Prime Video pages containing information about “General and I.” (the “Amazon Screenshots”). See *Id.* at ¶ 22.

21. In the Amazon Screenshots, not only images from all 62 episodes of the “General and I” were displayed on Amazon Prime Video’s website, but also there are customers reviews and comments dated as late as November 2020 depicting in the screenshots. See *Id.* at ¶ 23.

22. On September 17, 2021, Wanjuan Media’s attorneys sent out a warning letter to Amazon regarding the infringement of Wanjuan Media’s copyright in the “General and I” and demanded that Amazon remove all “General and I” related contents from its Prime Video platform. See *Id.* at ¶ 24.

23. On October 4, 2021, Wanjuan Media’s attorneys received an email response from Amazon stating that “Following your Notice of Copyright Infringement dated September 17, 2021, this message is to inform you that **as of October 4, 2021**, the title: ‘Gufang Bu Zishang’ is no longer available to stream, rent or purchase on Prime Video.” (Emphasis added). “Gufang Bu Zishang” is a transliteration of “孤芳不自赏”, which is translated as “General and I” in English. See *Id.* at ¶ 25.

24. On February 28, 2023, Amazon’s Rule 30(b)(6) representative David Ahlvers testified that Amazon did not conduct any independent due diligence to verify Amazon Prime Video’s content providers have the proper distribution rights in the TV shows or films contents before Amazon entered into distribution agreements with these content providers; instead, Amazon solely relied on the content providers’ representations and warranties that they did have the rights to distribute the contents. See **Ex. D** to Tung Decl., Ahlvers Tr. 17:7 to 21:13.

25. More specifically, Mr. Ahlvers testified that Amazon did not conduct any due diligence to verify the distribution rights on any contents provided by DramaFever, including the “General and I” TV Show at issue in this case. *Id.* at Ahlvers Tr. 22:13 to 23:5.

26. In this litigation, Amazon produced an agreement with the title of “Deal Memo” between Shanghai Croton Culture Media, Co., Ltd. (“Croton Culture”) and DramaFever Corp. (“DramaFever”). The Deal Memo was dated December 22, 2016. See **Ex. 2** to Li Decl. (Dkt. No. 49-1).

27. The Deal Memo was signed by representatives of both Croton Culture and DramaFever. Croton Culture also approved this agreement by applying its corporate stamp on the signature page. See *Id.*

28. Croton Culture had no rights to sign the Deal Memo with DramaFever on December 22, 2016 because Croton Culture had transferred all its rights in the “General and I” to Shanghai Croton Film and TV Media Co., Ltd. (the “Croton Film and TV”) on or about February 18, 2016 and Croton Film and TV later transferred its rights in the “General and I” to Horgos Croton Culture Media Co., Ltd. (the “Horgos Croton”) before March 7, 2016.

Dated: Queens, New York
April 21, 2023

Respectfully submitted,

KEVIN KERVENG TUNG, P.C.
Attorneys for Plaintiff



By: Ge Li, Esq. (GL9157)
Queens Crossing Business Center
136-20 38th Avenue, Suite 3D
Flushing, New York 11354
(718) 939-4633
gli@kktlawfirm.com